

IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH : BANGALORE

BEFORE SHRI N.V VASUDEVAN, VICE PRESIDNET AND  
SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.663/Bang/2018

Assessment year : 2010-11

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| Shri B.N Malatesh,<br>No.467, 16 <sup>th</sup> Cross,<br>BEML Layout, I Stage,<br>Basaveshwaranagar,<br>Bengaluru-560 079.<br><br>PAN – ACAPM 2782 M | Vs. | The Income-tax Officer,<br>Ward-10(2),<br>Bangalore. |
| APPELLANT  |     | RESPONDENT   |

|               |   |                                |
|---------------|---|--------------------------------|
| Appellant by  | : | Shri V Chandrasekhar, Advocate |
| Respondent by | : | Dr. Shankar Prasad, Addl. CIT  |

|                       |   |            |
|-----------------------|---|------------|
| Date of hearing       | : | 11.06.2019 |
| Date of Pronouncement | : | 14.06.2019 |

**ORDER**

*Per B.R Baskaran, Accountant Member*

The assess has filed this appeal challenging the order dated 6/1/2017 passed by Id CIT(A)-6, Bengaluru and it relates to asst. year 2010-11.

2. The assessee is aggrieved by the decision of Id CIT(A) in confirming the addition made by the AO towards cession of creditors liabilities.

3. We heard parties and perused the record. The assessee is engaged in the business of manufacture and supply of reflective sign boards. During the course of asst. proceedings, the assessee could not produce the books of accounts before the AO. In this regard he filed a letter dated 16/8/2012 stating that the books of accounts have been seized by the officers of Central Excise Department. However, the AO took the view that the assessee is avoiding production of books of account. The AO noticed that the balance sheet of the assessee disclosed sundry creditors balance of Rs.80.71 lakhs. The AO asked the assessee to furnish names and addresses of the sundry creditors and also confirmation obtained from them. However, the assessee furnished addresses for few persons only. The AO issued a letter to those persons requesting them to confirm the balances. However, only few of the persons confirmed the balance and sum of the letters also were returned un-served. Hence, the AO took the view that the assessee has failed to prove the genuineness of the creditors accordingly he made an addition of Rs.76.43 lakhs. The same was confirmed by Id CIT(A).

4. The Id AR submitted that the assessee could not furnish the books of accounts before the AO since the same was seized by the Central Excise Department. However, the assessee furnished certain details before the Id CIT(A) and hence the Id CIT(A) called for a remand report from the AO. However, in the remand report the AO reiterated the observations made by him in the asst. order. Even though the assessee sought an opportunity before Id CIT(A) to rebut the remand report, yet the Id CIT(A) dismissed the appeal of

the assessee without affording an opportunity to the assessee. The ld AR submitted that the assessee would be in a position to furnish all the details to prove the credit balances. He further submitted that the additions made by the AO also includes opening balances in the case of certain creditors which could not have been added during the year under consideration. Accordingly ld AR submitted that the entire matter requires fresh examination and accordingly prayed that the issue may be resorted to the file of the AO.

5. On the contrary, the ld DR submitted that the assessee has not furnished name and address of many creditors. Further the letter sent by the AO to some of the creditors were returned unserved or not responded. Wherever the creditors have responded and confirmed the balances, the AO has given relief. Since the assessee did not co-operate before the AO, the ld DR contended that the ld CIT(A) was justified in confirming the addition made by the AO.

6. We heard the rival contentions and perused the record. From the perusal of the documents filed by the assessee we noticed that the assessee was subjected to action by Central Excise Authorities on 29/11/2010 and according to the assessee the books of accounts have been seized by the Central Excise Authorities. The assessee has written letters to Central Excise Authorities to return the documents. Hence, there appears to be merit in the contentions of the assessee that it could not produce the books of accounts for reasons beyond his control. Under the set of facts, we are of the view that the assessee should be provided with an

opportunity to produce the books of account, confirmations from creditors etc., in order to prove genuineness of the credit balances. According to Id AR the additions made by the AO includes opening balances of certain creditors which could not have been made during the year under consideration. This submission of the assessee also requires examination under the set of facts there is merit in the contentions of the assessee that this issue requires fresh examination at the end of the AO. Accordingly we set aside the order passed by the Id CIT(A) and restore all the issues to the file of the AO for examining it afresh. The assessee is also directed to produce the books of account, confirmation from the creditors in order to prove the genuineness of the creditors after affording adequate opportunity of being heard to the assessee. The AO may take appropriate decision in accordance with law.

7. In the result, the appeal filed by the assessee is treated as allowed for statistical purpose.

Order pronounced in the Open Court on **14<sup>th</sup> June, 2019.**

**Sd/-**  
**(N.V Vasudevan)**  
**Vice President**  
Bangalore,  
Dated, 14<sup>th</sup> June, 2019.  
/vms /

**Sd/-**  
**(B.R Baskaran)**  
**Accountant Member**

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.